



# On Judges and the Art of Judicature: Shakespeare's *Henry IV, Part 2*

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*In the late sixteenth century, the common law experienced a phenomenal growth, both in the number of practitioners and jurisdictional power. A comparison of popular and professional literature on legal administration or judicature reveals the complex and ambivalent cultural response to the "rise" of the common law. Despite the usual praise for the common law as that which distinguished England from France, Italy, and other countries using civil law, many questioned the law's ability to deliver justice. Popular writing on justice, produced by preachers, moral essayists, and dramatists, centered on the law's failure to protect the poor, weak, and otherwise marginalized members of society. While popular legal commentators lacked the power to reform legal practices, they attempted to shape the public's perception of the law and lawyers through the writing of legal character. Authors of assize sermons and character books defined the character of a "good magistrate" as a "loving" father. In contrast, legal writing by lawyers suppressed the language of love and placed the emphasis on reason. This article investigates the resulting friction between professional and popular representations of judges and judicature and examines its impact on Shakespearean drama. In *Henry IV, Part 2*, Shakespeare explores the dissonance and irresolution within the cultural discourse on legal administration, and in so doing, expresses a tragic truth about the paucity of justice in a world consumed by law.*

**D**URING the late sixteenth and early seventeenth centuries, the English common law gained historic strength, as witnessed in the concentration of jurisdictional power in the central courts and in the sharp increase in civil litigation.<sup>1</sup> Consequently, the number

<sup>1</sup> According to Christopher Brooks, the rate of civil litigation peaked in 1600 ("Professions, Ideology and the Middling Sort in the Late Sixteenth and Early Seventeenth Cen-

of legal officers tasked with the administration of the law grew steadily, as did the rate of matriculation at the Inns. According to Louis A. Knafla, the years 1579 to 1584 marked the first of several periods of "highly accelerated growth" for the Inns of Court.<sup>2</sup> Although contemporaries lacked access to the numerical data of modern historians, they were acutely aware and deeply critical of the structural transformation of the law, especially with respect to the exponential growth of lawyers in a relatively short span of time.

A comparison of how legal professionals and nonprofessionals witnessed the rise of the common law reveals starkly different worldviews. Lawyers took pride in the growth of their profession. "The posterity of Lawyers hath more flourished then that either of the Clergy or Citizens," remarked the lawyer and diarist John Manningham.<sup>3</sup> But the phenomenal growth of the legal profession also provoked negative responses. Indeed, many suspected that lawyers got rich by entrapping their clients within law's intricate procedures. In an unpublished 1603 assize sermon, George Closse (a preacher from Black Torrington, Devon) sharply criticized lawyers for their unethical practices. Closse recounts the following story: a man of the cloth asks a lawyer what "law is," and the lawyer replies that law is "a pretty trick to catche mony w[i]t[h]all." Closse quips, "and indeed a man may beleve it to be a principall point in the p[ro]fession."<sup>4</sup> He reminds his audience that "our

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turies," in *The Middling Sort of People: Culture, Society, and Politics in England, 1550–1800*, ed. Jonathan Barry and Christopher Brooks (Houndmills: Macmillan, 1994), 123). Additionally, J. A. Sharpe comments that "practically every court, whether civil or criminal, experienced an increase in business between the mid-sixteenth and mid-seventeenth centuries" ("Such Disagreement Betwix Neighbours': Litigation and Human Relations in Early Modern England," in *Disputes and Settlements: Law and Human Relations in the West*, ed. John Bossy [Cambridge: Cambridge University Press, 1983], 168).

<sup>2</sup> Knafla, "The Matriculation Revolution and Education at the Inns of Court in Renaissance England," in *Tudor Men and Institutions*, ed. Arthur Slavin (Baton Rouge: Louisiana State University Press, 1972), 237.

<sup>3</sup> Manningham, *The Diary of John Manningham of the Middle Temple, 1602–1603*, ed. Robert Parker Sorlien (Hanover, NH: University Press of New England, 1976), 78.

<sup>4</sup> Closse, *A Looking Glasse for Lawers, & Lawiers. A Sermon Preached before the Judges of Assize for the Countie of Devon, in the Cathedrall Church of St Peter in Exon on the 8th Day of August: 1603: By George Closse Maister of Artes, a Preacher of the Worde of God at Blacktorrington*, Lambeth Palace Library MS 113, ff.53r–60v, 57v. I am grateful to Arnold Hunt for bringing this manuscript to my attention. For additional examples of anti-lawyer satire in assize sermons, and general discussion of the evolution of the genre, see Hugh Adlington, "Restoration, Religion, and Law: Assize Sermons, 1660–1685," in *The Oxford Handbook of the Early Modern Sermon*, ed. Peter McCullough, Hugh Adlington, and Emma Rhagitan (Oxford: Oxford University Press, 2011), 423–59; Arnold Hunt, *The Art of Hearing: English Preachers and Their Audiences, 1590–1640* (Cambridge: Cambridge University Press,

lawes are not cobwebbes to catche flyes, & let great birdes breake theron them.”<sup>5</sup> The image of the spider’s web, as Hugh Adlington explains in his study of early modern assize sermons, comes from Plutarch’s biography of Solon, and preachers often used it “to illustrate inequitable judicial procedure.”<sup>6</sup> People used the courts—and sought the counsel of lawyers—but they resented the experience. Not surprisingly, antipathy toward the legal profession spawned numerous verse satires and plays.<sup>7</sup>

The explosion of anti-lawyer complaints and satires, however, did not signal a mass protest against the law itself.<sup>8</sup> Rather, the complaints were chiefly directed against the officers of the law. Of those who took up the commons’ cause, preachers, essayists, and dramatists were the most aggressive in vocalizing the flaws of lawmen: their failure to deliver fair judgments, to carefully sift evidence, and to adequately protect the innocent, the poor, the weak, and the otherwise marginalized members of society. Although they lacked the power to reform legal practices, these lay legal commentators attempted to shape the public’s perception of the law and the habits of legal professionals through their analysis of legal character, that is, the moral character of judges and other magistrates involved in “judicature,” the administration of the law. They reasoned that if the law was the perfection of reason and

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2010); Barbara J. Shapiro, “Political Theology and the Courts: A Survey of Assize Sermons, c1600–1688,” *Law and Humanities* 2 (2008): 1–28. On the use of assize sermons as a medium of political complaint and social negotiation, see Juliet Amy Ingram, “The Conscience of the Community: The Character and Development of Clerical Complaint in Early Modern England” (PhD thesis, University of Warwick, 2004), chap. 2.

<sup>5</sup> Closse, *A looking Glasse for lawyers, & lawiers*, 58r.

<sup>6</sup> Adlington, “Restoration, Religion, and Law,” 427. Subha Mukherji examines other common images of law, including the image of law as a Hydra’s head, a waxen nose, and a labyrinth. See her *Law and Representation in Early Modern Drama* (Cambridge: Cambridge University Press, 2006), 233–48. Additionally, Peter Goodrich’s *Legal Emblems and the Art of Law: Obiter Depicta as the Vision of Governance* (Cambridge: Cambridge University Press, 2014) offers a comprehensive study (as well as illustrations) of law-related emblems, images, and iconography.

<sup>7</sup> For a survey and analysis of early modern English anti-law satire, see Edward F. J. Tucker, *Intruder into Eden: Representations of the Common Lawyer in English Literature, 1350–1750* (Columbia, SC: Camden House, 1984). On popular responses to the rise of professions (including that of law) in early modern England, see Edward Gieskes, *Representing the Professions: Administration, Law, and Theater in Early Modern England* (Newark: University of Delaware Press, 2006).

<sup>8</sup> According to Sir Edward Coke, the English commonwealth owed its peace and stability to the rule of law. In “other Nations,” he claims, the people are oppressed by “tyranny” and the monarch’s “powerfull will and pleasure” (Coke, *Le Second Part Des Reportes Del Edward Coke* [London, 1602], ¶4v).

humans (by nature) were weak and fallible, then injustice had to be the result of human negligence or corruption.

Lay legal commentators lacked a language to address institutional or systemic injustice. Injustice was attributed to human moral failings. For that reason, when we encounter this body of literature, we routinely come across such stock characters as the ignorant scrivener, the greedy advocate, the partial judge, and other immoral legal characters. In early modern England, those who had the ability to reflect and comment on the law (and print those comments for public consumption) defined justice as a form of moral character, of individual virtue or vice. This is a reading of justice that apparently resonated with popular audiences. Curiously, legal professionals also found uses for the paradigm. For example, in his essay "Of Judicature," Sir Francis Bacon complains of the "Unjust Judge" whose "Foule Sentence . . . Corrupteth the Fountaine" of justice.<sup>9</sup> Bacon raises the specter of the partial judge in order to preserve the integrity of the profession: blame the lawman, spare the law.<sup>10</sup>

As law came to occupy an ever-greater share of the cultural imagination, writers from different social and professional backgrounds made a concerted effort to fix the character of the judge, from his moral wisdom to his self-presentation.<sup>11</sup> Yet, as I shall explain, professional and nonprofessional writers employed different criteria in their evaluation of the "good" judge. The differences expose a gap between professional and lay visions of the nature of law and administration. Whereas members of the legal profession spoke reassuringly of the integrity of the law (even as some lawyers occasionally questioned the dominant view), the public and their advocates, the writers who echoed and amplified pub-

<sup>9</sup> Bacon, *The Essayes or Counsell, Civill and Morall*, ed. Michael Kiernan (Oxford: Clarendon, 2000), 166. My discussion of judicial character writing connects in some ways to Holger Schott Syme's recent article published in this journal on the depiction of juries in early modern drama. Syme argues that "early modern notions of justice tended to be strongly linked to procedural ideals, casting the state rather than the individual as the guarantor of just order" ("(Mis)representing Justice on the Early Modern Stage," *Studies in Philology* 109 [2012]: 64). I hope that my article shows how early modern writers valued individuals' contribution to the "just order" as much as trial by jury.

<sup>10</sup> Ironically, years later, Bacon himself would be indicted for taking bribes whilst serving as the Lord Chancellor and judge of the Chancery court.

<sup>11</sup> An early but seminal text within this genre is *A Mirror for Magistrates* (written sometime in the 1550s). See Scott C. Lucas, *A Mirror for Magistrates and the Politics of the English Reformation* (Amherst: University of Massachusetts Press, 2009); Jessica Winston, "A Mirror for Magistrates and Public Political Discourse in Elizabethan England," *Studies in Philology* 104 (2004): 381–400; and Paul Budra, *A Mirror for Magistrates and the De Casibus Tradition* (Toronto: University of Toronto Press, 2000).

lic opinion, bitterly complained of the law's inability to distribute fair and equitable justice because of an overly complex and mediated legal system.<sup>12</sup>

What did the critics say about "good" judges? Preachers exhorted magistrates to be "loving" fathers to the people and to practice mercy in judgment. A judge should respond to petitioners with immediate attention, sympathy, and understanding. Hence, addressing an imaginary judge, the preacher Robert Harris emphasizes that "you are tearmed *Fathers*: direct you must, correct you may, but all in love."<sup>13</sup> Cast in the role of the loving father, the judge works to preserve a sense of fellowship and belonging in the Christian community. What was the professionals' response? Lawyers emphasized the role of reason, knowledge, and Stoic disavowal of the passions in the act of judgment. The word "love" rarely appears in the professional's vocabulary. Indeed, lawyers associated that word with judicial corruption and partiality.<sup>14</sup> When judges and lawyers reflected on the duties of their office, they emphasized the intellectual demands of their work: reading, pleading, and commentary. Addressing different audiences, citing different authorities, professional and nonprofessional writers applied seemingly incommensurate formulas in their evaluation of the person of the magis-

<sup>12</sup> The phenomenon of mediation in law is richly explored in Holger Schott Syme, *Theatre and Testimony in Shakespeare's England: A Culture of Mediation* (Cambridge: Cambridge University Press, 2012). Occasionally, lawyers acknowledged the complaints of the people. For example, in his legal treatise *Archeion, or Commentaries on the Courts of England* (composed in 1591, possibly began earlier, and published in 1635), Sir William Lambarde (a lawyer, justice of the peace, and member of Parliament) raises the possibility of judicial corruption in Elizabethan courts. The Harvard Law School Library possesses a rare manuscript copy of Lambarde's book under the title of "Against Auricular Information of Judges: 1590: W. La." When Wilfrid Prest compared the manuscript to the printed copy, he discovered that the manuscript copy "lists some of the more subtle ways in which a case law can be prejudiced: 'by resuming it to a private hearing, by drawing it into Long and tedious prosecution, by committing it to a partial reaporte, by referring it to some Unequal arbitrement'" ("William Lambarde, Elizabethan Law Reform, and Early Stuart Politics," *Journal of British Studies* 34 [1995]: 471–72). Lambarde's analysis of judicial corruption is vaguely expressed. Throughout his critique, Lambarde carefully omits details that could connect his observations to a specific place, time, or person.

<sup>13</sup> Harris, *Saint Paul's Exercise. A Sermon Preached before the Judges at Assize, in Two Sermons: The One Preached before the Judges of Assize at Oxford. The Other to the Universities* (London, 1628), D4r.

<sup>14</sup> For a recent analysis of legal professional and dramatic representations of judicial partiality, see Derek Dunne, "'Partialitie in a Judge, Is a Turpitude': Partial Judges and Impartial Revengers in Early Modern English Drama," in *The Emergence of Impartiality: Towards a History of Objectivity*, ed. Kathryn Murphy and Anita Traninger (Leiden: Brill, 2013), 171–89.

trate. In describing the judge—his person (in the sense of character) and his relationships with the people he judges—nonprofessional writers effectively trespassed on the legal field, at times contesting the professionals' vision with their popular notions of justice.<sup>15</sup>

This article traces the key differences between professional and popular representations of judges and legal administration. In the first section, I examine assize sermons and character books published between the 1590s and 1620s to show how they employ the language of love and construct the fantasy of direct contact in law. In the second section, I explore the conspicuous absence of both the language of love and the narrative of direct legal contact in the professional literature. On the whole, lawyers and judges emphasized the necessity of emotional and physical distance in law. Then, in the third section, I study the impact of this rich debate on Shakespearean drama. In *Henry IV, Part 2*, the gradual transformation of the Lord Chief Justice—a character loosely based on the historic figure Sir William Gascoigne (c. 1350–1419)—from a local mediator, a pseudo-justice of the peace who rubs shoulders with the people in the marketplace, to a royal justice who stands literally and metaphorically between the king and his subjects, captures the dissonance and irresolution within the cultural discourse on legal administration, and in so doing, expresses a tragic truth about the paucity of justice in a world consumed by law.<sup>16</sup> By emphasizing

<sup>15</sup> Although I posit a difference between popular and professional views on judges and justice, I am not proposing that the writers themselves were strictly divided according to professional lines. Indeed, as recent work in both literature and history has shown, the categories of the “professional” and “nonprofessional” were often blurred. Some legal practitioners were nonprofessionals, in the sense of their lacking legal education and expertise, and some lawyers were far more interested in popular and literary writing than the law. Nonetheless, I argue that popular and professional writers were conditioned to talk about the person of the judge using different languages, and that these differences flow from the process of professionalization that accelerated during the reign of Elizabeth. For further discussion of the integration of literature and art at the Inns of Court, see Jessica Winston, *Lawyers at Play: Literature, Law and Politics at the Early Modern Inns of Court, 1558–1581* (Oxford: Oxford University Press, 2016); Jane Elisabeth Archer, Elizabeth Goldring, and Sarah Knight, eds., *The Intellectual and Cultural World of the Early Modern Inns of Court* (Manchester: Manchester University Press, 2011); Michelle O’Callaghan, *The English Wits: Literature and Sociability in Early Modern England* (Cambridge: Cambridge University Press, 2007).

<sup>16</sup> Sir William Gascoigne (c. 1350–1419) lived six years into the reign of Henry V. Born in Gawthorpe, Yorkshire, Gascoigne graduated from Cambridge and later of the Inner Temple and enjoyed a respectable career from the time he was appointed to the bench (15 Nov. 1400) to the time of Henry IV’s death. Henry V paid the justice due respect by rewarding him “four bucks and does out of the Forest of Pontefract annually for the term of his natural life” (F. Solly-Flood, “The Story of Prince Henry of Monmouth and Chief-

the contradictions embodied in the character, I hope to revise a now-standard interpretation that considers the Chief Justice as an emblem of the law: a “symbol, not man.”<sup>17</sup> I argue that such identification is based on the assumption that the character embodies a coherent vision of law, a vision found in common law treatises written by legal professionals. But this is not the case. The Chief Justice exemplifies the excesses and contradictions found in both popular and professional legal ideology. Like the idealized magistrates in popular and moral-legal writing, the Chief Justice establishes a paternal relationship with petitioners. He dispenses *ad hoc* justice without middlemen or documentation. Yet his personal, intimate style of justice proves to be ineffective. Although he provides sage advice and equitable sentences, the Chief Justice ultimately leaves the community in a lurch: without adequate protection or legal recourse against injustice. Yet even as the play dashes the popular discourse and its insistence on popular contact, it casts doubt on the professional account of effective legal administration as the maintenance of distance, both emotional and physical, between the judge and the people. In the final scenes, the Chief Justice mirrors the remote majesty of the king and participates in Hal’s rejection of Falstaff. The tragic mood in the final scene exposes a paradox in law: by implementing the king’s mandate, the judge effectively bars any further possibility of forgiveness or reconciliation between Hal and Falstaff. The action of the character casts doubt on the capacity of law to administer justice—not the justice as defined by the monarch or the institution of law but the justice alive in the popular imagination—a justice that transforms discord into harmony through a magistrate’s direct and loving care.

#### JUDGES IN THE POPULAR IMAGINATION

In England, there were opportunities, albeit limited, for face-to-face encounters between judges and petitioners. For example, people could—and did—plead before judges in prerogative courts such as the Court

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Justice Gascoign,” *Transactions of the Royal Historical Society*, n.s., 3 [1886]: 65). See also Edward Powell, “Gascoigne, Sir William (c. 1350–1419),” *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004), <http://www.oxforddnb.com/view/article/10427>.

<sup>17</sup> M. C. Bradbrook, *Shakespeare and Elizabethan Poetry* (Cambridge: Cambridge University Press, 1951), 201. See also her essay “Role-Playing in *Henry IV*,” in *William Shakespeare’s Henry IV*, Part 2, ed. Harold Bloom (New York: Chelsea House Publishers, 1987), 71–83.



of Requests and Star Chamber. Both courts attracted relatively humble petitioners.<sup>18</sup> On rare occasions, petitioners appeared before judges in domestic spaces. For example, John Levermore, an Exeter trader, managed to take his case to Sir John Popham (who was then the Lord Chief Justice) while the latter sat at dinner with a friend.<sup>19</sup> But stories like Levermore's survive, in part, because of their exceptional nature. What people expected and what they got for the most part were law's delays.

The exploitative nature of lawyers is diagnosed and analyzed in assize sermons and character books, which were published, beginning in the late sixteenth century, in small volumes for a general audience. In this literature, lawyers appear as trickster figures who bedevil their clients with legal legerdemain. The conclusion is clear: justice may prevail only in the absence of such slippery intermediaries. In his assize sermon, Closse sketches a tragic-comic portrait of a man enmeshed in law's labyrinth. He "counteth his care, his cost, his labor, his time & every thing" and "lamentes he bought so deere inke & paper; so many narrow sheetes written w[i]t[h] so few & short lines."<sup>20</sup> For the poor man to receive justice, he must enjoy direct contact with a judge, or so preachers and other moral writers reasoned.

Preachers and moral writers combed the Bible for examples of direct contact in law, and they found their exemplars in David, Solomon, Josiah, and Hezekiah, and other judges of the Old Testament.<sup>21</sup> For example, the popular London preacher Henry Smith, whose sermons saw multiple printings in the 1590s, describes how David praised Jerusalem for establishing a "seate for judgment set in the gate, wher through men might have passage to and from the judgement seat."<sup>22</sup> Samuel Garey, another preacher, reminds his readers that the biblical Samuel traveled "about yeare by yeare, (as it were in circuite) to *Bethel, Gilgal, and Miz-*

<sup>18</sup> On the day-to-day operation of the Star Chamber, see Steve Hindle, *The State and Social Change in Early Modern England, 1550–1640* (Houndmills: Palgrave, 2002) and of the Court of Requests, particularly as it was used by female litigants, see Timothy Stretton, *Women Waging Law in Elizabethan England* (Cambridge: Cambridge University Press, 1998).

<sup>19</sup> Popham was Chief Justice between 1592 and 1607. See Douglas Walthew Rice, *The Life and Achievements of Sir John Popham, 1531–1607: Leading to the Establishment of the First English Colony in New England* (Madison, NJ: Fairleigh Dickinson University Press, 2005), 102–3.

<sup>20</sup> Closse, *A Looking Glasse*, 60r.

<sup>21</sup> The acts of Lycurgus and Solon were translated by Thomas North in Plutarch, *The Lives of the Noble Grecians and Romanes* (London, 1595).

<sup>22</sup> Smith, *A Memento for Magistrates*, in *The Poore-Mans Teares* (London, 1592), E[8]r.

*peth*, and judged Israel in all those places.”<sup>23</sup> John Stephens, in his character book, remarks that the “Honest Lawyer” is defined by his ability to “ride the circuit, and scorne to be circular.”<sup>24</sup> Along similar lines, Joseph Hall, in his character book, states that the “good magistrate” “knows himself made for a public servant of peace and justice” and that as a “public servant,” he willingly allows his “meals” to be “short and interrupted.”<sup>25</sup> For these writers, the chief value of direct contact is the preservation of unmediated truth. By hearing the facts of the case from the people themselves, judges are able to deliver just decisions.

The notion of direct contact sustains the common vision, found in assize sermons and like works, that sees the magistrate as a “father of the people.”<sup>26</sup> Comparisons of judges to fathers, indeed, loving fathers, distinguish the popular discourse from the professional one. (The next section will discuss the professional outlook in detail.) Thus, the aforementioned preacher Garey states that “[t]he poore commit themselves unto you [judges], for you should be helpers of the fatherlesse” and “relieve the oppressed . . . & defend the widowes.”<sup>27</sup> In the margin, Garey (or his printer) added a biblical citation to “Psal. 10. 13.”<sup>28</sup> The preacher Robert Harris reasons that a good magistrate acts as a poor man’s “brother.” He states that the “office” of the “Reverend Judges” is to “plucke the spoile out of the teeth of the mighty, as *Job* did; and to bestride your poore brother, when hee is stricken downe.”<sup>29</sup> Like Garey, Harris is careful to ground his exegesis in the scripture, specifically in

<sup>23</sup> Garey, *Ientaculum Iudicum: Or, A Breake-Fast for the Bench: Prepared, Presented, and Preached in Two Sacred Seruices, or Sermons, the Morning Sacrifice before the Two Assizes: At Thetford, at Norwich: 1619. Containing Monitory Meditations, to Execute Iustice and Law-Businesse with a Good Conscience* (London, 1623), B3r.

<sup>24</sup> Stephens, *Essayes and Characters, Ironical, and Instructive, in Books of Characters, Illustrating the Habits and Manners of Englishmen from the Reign of James I. to the Restoration*, ed. James O. Halliwell (London, 1857), 149. Stephens’s book was first published in 1615.

<sup>25</sup> Hall, *Characters of Vertues and Vices. In Two Bookes* (London, 1608), E[5]v. Hall copies this sentence (nearly verbatim) from Pierre de Charron’s *De la sagesse* (*On Wisdom*). In the French edition, Charron writes, “Le Magistrat doit estre de facile acces, prest a ouyr & entendre toutes plaintes & requestes, tenant sa porte ouuerte a tous, & ne s’absenter point, se souenant qu’il n’est à foy, mais à tous; & serviteur du public” (*De la Sagesse* [Paris, 1607], 685).

<sup>26</sup> Sir Christopher(?) Yelverton, “Notes of Sermons, 1592–1621,” BL, Add. MS 48016, 31r.

<sup>27</sup> Garey, *Ientaculum Iudicum*, B[4]r–v, D2r.

<sup>28</sup> Psalms 10:14: “the poore committeth himselfe unto thee, thou art the helper of the fatherlesse” (*The Holy Bible* [London, 1611], 3B6r, <http://sceti.library.upenn.edu/sceti/printedbooksNew/index.cfm?TextID=kjbible&PagePosition=651>).

<sup>29</sup> Harris, *Saint Paul’s Exercise*, D2v.

Job 29:14–17, “I put on righteousness as my clothing: justice was my robe and my turban. I was eyes to the blind, and feet to the lame. I was a father to the needy; I took up the teeth.”<sup>30</sup> Through their choice selection of quotations from the Bible, preachers built their idealized image of the judge as a loving father.

Although preachers advocated a program of love in law, they were also sensitive to the all-too-easy slippage between affection and favoritism. Thus, Harris reminds judges that to be moved to “smite a sinner, with a weeping eie and a feeling heart” is not the same thing as to be overcome by emotions.<sup>31</sup> “Passion and unruly affections” have no place in the law.<sup>32</sup> Few navigated the complicated discourse of love in law better than Henry Smith. In his assize sermon, Smith explains that when judges sit “upon the Bench,” they “should forget themselves to be men, which are lead [*sic*] by the armes betweene favour and feare, and thinke themselves *Gods*, which feare nothing.”<sup>33</sup> However, judges should blend that “feare nothing” attitude with genuine Christian compassion. When common people petition them for protection, judges should respond with sympathy not contempt. Smith tells the following story to illustrate his point:

When *Phillip*, the king of Macedonia, did cast of the earnest sute of a poore widowe with this slender answer; go thy way, for I have no leasure to heare thee now. She replied thus, and why hast thou leasure to be a King; as if shee should have said, God hath given thee time to raigne, and power to govern, that thou mightest applie them both unto that end wherefore they are given thee: for mercie and truth preserveth a King, and with loving kindnes his seat is upholden. Prov. 20<sup>34</sup>

There are two details here that are relevant to the present discussion. First, the character of the “poor widow” (or her cognate, the poor man or orphan) is a stock character in literature of this kind. She represents a subordinate subject who is particularly deserving of judicial regard

<sup>30</sup> Qtd. in Adlington, “Restoration, Religion, and Law,” 429. Adlington focuses specifically on assize sermons from 1660 to 1685, but many of his observations are applicable to earlier sermons. According to him, “approximately three-fifths of printed assize sermons were preached on Old Testament texts, with Psalms, Proverbs, and Exodus being the favourite sources. Acts, Romans, and Hebrews were the most popular sources of New Testament texts” (427).

<sup>31</sup> Harris, *Saint Paul’s Exercise*, D4r.

<sup>32</sup> Samuel Ward, *Jethro’s Justice of Peace. A Sermon Preached at the Generall Assises Held at Bury St Edmunds for the Countie of Suffolke* (London, 1621), B[7]r–v.

<sup>33</sup> Smith, *The Magistrates Scripture*, in *The Sermons of Maister Henrie Smith, Gathered into One Volume. Printed according to His Corrected Copies in His Life Time* (London, 1593), Yy8v.

<sup>34</sup> Smith, *A Memento for Magistrates*, F1r.

because, lacking money and protection, she is vulnerable to social or economic oppression. Second, Smith defines kingship and magistracy in the language of Christian care. For Smith, the end of kingship is the preservation of “mercy and truth.” By refusing to hear the widow’s “truth” (in the form of her “earnest suit”), the king of Macedonia demonstrates his inadequacy as a ruler. To Smith’s audiences, the attack on Philip would have carried political resonance, for the name “Philip” had become synonymous with “tyrant.” Thomas Wilson’s translation of Demosthenes’s *Philippics* (1570) explicitly connected Philip of Macedonia’s military aggression with that of Philip II of Spain.<sup>35</sup> The lesson that Smith seeks to impart is that kingship and magistracy do not lie in grand performances of “majesty” but rather in small, nearly unseen acts of “loving kindness,” such as those that Philip might have bestowed upon the widow.

For these writers, the ability to achieve equitable judgment is dependent on a judge’s ability to strike a sympathetic resonance—an emotional bond—with the people. To practice “right judgement” and “equitye,” judges must first see themselves as “fathers.”<sup>36</sup> They have to be moved by the people’s plight. The ideal judge makes himself available to the people (especially the poor) by journeying into their midst and by adopting an approachable as opposed to haughty deportment. Empathy, patience, and fairness are the moral virtues of good judges. Hence, religious and moral writings on magistracy tend to equate moral feelings (piety, honesty, care, love) with judicial *virtù* (power, action, ability). This literature posits a link between a judge’s capacity for compassionate feeling and his ability to do justice. Real justice does not stem from law’s bureaucracy or its force alone but from direct contact: the face-to-face encounter between magistrates and petitioners. What has love got to do with magistracy? Everything, according to the authors examined here.

#### JUDGES ACCORDING TO THE JUDGES

Legal professionals employed a different language in their praise of the worthy judge. Whereas religious and moral authors emphasized the need for familiar contact in judgment, legal professionals argued for

<sup>35</sup> See Alastair J. L. Blanshard and Tracey A. Sowerby, “Thomas Wilson’s Demosthenes and the Politics of Tudor Translation,” *International Journal of the Classical Tradition* 12 (2005): 46–80.

<sup>36</sup> Yelverton, “Notes of Sermons,” 31r.

the need to suspend all “passions” in the moment of judgment. Judges and lawyers from Sir Edward Coke to Sir Francis Bacon instructed judges to maintain a distance from the people. Thus, the theme of loving magistracy is largely absent in the professional literature.

Legal professional accounts of magistracy highlight the judges’ intellectual acuity and expansive legal knowledge. On the qualities of the excellent lawyer, the judge Sir John Dodderidge reflected that the “[t]he first and chiefest Natural gift is sharpenesse, and dexterity of wit.”<sup>37</sup> Lesser authorities concurred. The judge and law reporter Sir George Croke praised Sir Christopher Wray, his contemporary and a Chief Justice of the Queen’s Bench, as that “most revered Judge, of profound and judicial knowledge.”<sup>38</sup>

The discussion of the role of legal knowledge in judgment dominated Coke’s reflections on law. Rarely does Coke talk about love and friendship in law; instead he emphasizes the challenges (and pleasures) of legal study. For Coke, “Judges of the Law” address “matters of difficultie.”<sup>39</sup> On the “jurisprudence” of the medieval judge Sir Thomas Littleton, Coke sings of Littleton’s “certaintie and knowledge of the Lawe.”<sup>40</sup> Justices such as Littleton devoted their lives to honing the “art” of legal logic:

He [Littleton] was learned also in that Art, which is so necessary to a compleat Lawyer (I mean) Logicke, as you shal perceive by reading of these Institutes, wherein are observed his Sillogismes, Inductions, and other arguments; & his Definitions, Descriptions, Divisions, Etymologies, Derivations, Significations, & the like.<sup>41</sup>

When professionals such as Coke talk about themselves or their colleagues, they invariably mention their “Art,” “wit,” and “knowledge.” This mode of thinking about the legal character runs counter to the popular one, which discusses it in terms of Christian virtue or love. The standards by which Coke evaluates his peers—past, present, and future—are what we might call “textual” or “academic.” Coke was clearly addicted to the pleasures of reading, and he was proud of his

<sup>37</sup> Dodderidge, qtd. in Paul Raffield, “The Ancient Constitution, Common Law and the Idyll of Albion: Law and Lawyers in *Henry IV, Parts 1 and 2*,” *Law and Literature* 22 (2010): 20.

<sup>38</sup> Croke, qtd. in G. W. Keeton, *Shakespeare’s Legal and Political Background* (New York: Barnes and Noble, 1967), 6.

<sup>39</sup> Edward Coke, *Les Reports de Edward Coke* (London, 1602), E1r.

<sup>40</sup> Coke, *The First Part of the Institutes* (London, 1628), Ggggg2v–3r.

<sup>41</sup> *Ibid.*, ¶¶v.

achievements. Sounding not unlike a modern-day university professor, Coke instructs his readers to work their way through the complete text before resorting to abridgments and commentaries:

Myne advice to the Student is, That . . . hee read againe and againe our Author himselfe [i.e. Littleton] in that Section, and doe his best endeavours, first of himselfe, and then by conference with others, (which is the life of Studie) to understand it, and then to read our Commentarie thereupon, and no more at any one time, than hee is able with delight to beare away, and after to meditate thereon, which is the life of reading.<sup>42</sup>

To “read againe and againe” and then “meditate thereon” constitute Coke’s understanding of the legal method and the essence of legal work. Coke is therefore fundamentally interested in the intellectual reasoning aspects of law: how lawyers acquire, develop, and ultimately perfect what he calls “artificial reason” (*lex ratio*).<sup>43</sup>

Despite their political differences, Bacon agreed with Coke (and other lawyers) on the nature and practice of judicature.<sup>44</sup> Bacon states that “[a] popular Judge is a deformed thing; and *plaudite’s* are fitter for players than for magistrates.” While Bacon encourages judges to “[d]o good to the people, love them and give them justice,” he warns them against courting popularity: “let it be, as the Psalm saith, *nihil inde expectantes*; looking for nothing, neither praise nor profit.”<sup>45</sup> Bacon’s statement reflects an ongoing concern among Elizabethans with what Jeffrey S. Doty calls the “problem of popularity”: that anxious and paranoid suspicion

<sup>42</sup> Ibid., A[2]r.

<sup>43</sup> *Lex ratio* is defined by Coke in the following passage: “Ratio est anima legis; for then are we said to know the law, when we apprehend the reason of the law; that is, when we bring the reason of the law so to our owne reason, that wee perfectly understand it as our owne” (Coke, *The First Part of the Institutes of the Lawes of England or a Commentary upon Littleton* [London, 1809], §395a). For further discussion of Coke’s understanding of the difference between natural and artificial reason, see Allen D. Boyer, “Sir Edward Coke, Ciceronianus: Classical Rhetoric and the Common Law Tradition,” *International Journal for the Semiotics of Law* 10.28 (1997): 6; J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century: A Reissue with a Retrospect* (Cambridge: Cambridge University Press, 1987), 35; Charles Gray, “Reason, Authority, and Imagination: The Jurisprudence of Sir Edward Coke,” in *Culture and Politics: From Puritanism to the Enlightenment*, ed. Perez Zagorin (Berkeley: University of California Press, 1980), 30; and John U. Lewis, “Sir Edward Coke: His Theory of Artificial Reason as a Context for Modern Basic Legal Theory,” *Law Quarterly Review* 84 (1968): 337.

<sup>44</sup> On the conflict between Bacon and Coke, see Richard Helgerson, *Forms of Nationhood: The Elizabethan Writing of England* (Chicago: University of Chicago Press, 1992), chap. 2.

<sup>45</sup> Bacon, “Speech . . . before the Summer Circuits,” in *The Essays or Counsels, Civill and Morall*, 307.

on the part of the ruling class of public figures who court popular opinion, whether in the legal, political, or religious sphere.<sup>46</sup>

Closely related to the question of popularity in law is that of friendship in judgment. Sir William Lambarde identified "friendship" as one of the contributing factors in judicial corruption in Elizabethan courts. Too often, judges, justices of the peace, and "other Commissioners or Delegates . . . will dip their owne fingers in the *Suits* that depend before them; and will be seene more like to affectionate *Advocates*, or *Parties*, than to sincere and indifferent *Judges*."<sup>47</sup> Writing on this subject (in his 1607 charge to the grand jury), Coke warns fellow judges of the dangers of friendship in their profession. Coke tells the story of a virtuous young Roman who foreswears friendship shortly before he becomes a senator. The young man invites his friends and family to a banquet and, at the end of the meal, makes the following announcement:

It is true that I purpose as I must, to take my leave of you all, and to be a stranger to my dearest friends, and nearest Allies: I must forget all former friendships, and my most familiar Acquaintance, I must accompt as greatest stra[n]gers unto me; Thus must I depart from you, & yet continue amongst you, for by the love, power & authoritie of the *Senate*, I am appointed to be a Judge, and in the seate of Justice, I must forget the remembrance of your former friendships and acquaintance, and onely in the person of a Judge, with respect to keepe my conscience cleare, must with equitie & uprightness, justly administer justice unto you all.<sup>48</sup>

For Coke, the "person of a Judge" is one who relinquishes the pleasures of friendship to pursue the right but lonely path of judicial impartiality. To be a good judge, one must in effect act contrary to the dominant customs and rituals surrounding conviviality. Seeking popularity and cultivating friendship go hand in hand, but neither should exist in the law. To resist temptation, judges must adopt stoic self-reserve perfected through devotion to legal study. According to legal professionals, it is better for magistrates to stand apart from the people than with them, to judge them with cool reason than warm passion. The young Roman from Coke's fable who "forget[s] all former friendships" is held to be an example for all judges.

<sup>46</sup> Doty, "Measure for Measure and the Problem of Popularity," *English Literary Renaissance* 42 (2012): 33.

<sup>47</sup> Lambarde, *Archeion*, G1v.

<sup>48</sup> Coke, *The Lord Coke His Speech and Charge. With a Discoverie of the Abuses and Corruption of Officers*, ed. Robert Pricket (London, 1607), B4r.

ENTER THE LORD CHIEF JUSTICE:  
SHAKESPEARE'S *HENRY IV, PART 2*

The two sections above explored some of the key differences between popular and professional discourses on the character of the judge. That work allows me to begin to unpack the complex and ambivalent depiction of judges and judgment in Shakespeare's *Henry IV, Part 2*. The role of the Chief Justice in the play has inspired numerous scholarly reflections. Some critics have explained the existence of the character and his significant role in the play using allegorical or structural analysis. For example, C. L. Barber reads the meetings between Falstaff and the Chief Justice as an extension of the play's moral message: Falstaff represents Vice and Carnival, and the Chief Justice Virtue and Lent. According to that structural logic the Chief Justice must accompany his antagonist wherever the latter goes.<sup>49</sup> Since Barber's time, critics have greatly expanded the conversation by taking into account the character's political fortunes, specifically, his role in the contest between royal power and the rule of law. In act 5, scene 2, we witness a dramatic encounter of conflict and reconciliation between the young king and the Chief Justice and, ostensibly, the institutions that each character represents. For Lorna Hutson, the scene captures the spirit of the play, which celebrates "civic consciousness" over royal absolutism.<sup>50</sup> Her reading is supported by Paul Raffield's discussion of the Chief Justice as a "model of governance" who upholds the "ancient constitution" by teaching Hal the lesson of "accountable kingship and limited monarchy."<sup>51</sup>

While these interpretations provide the groundwork for the analysis that follows, I am concerned that the criticism to date focuses too narrowly on the character's speech in that scene. It is important to keep in mind that the role of the Chief Justice is both substantial and evolving.<sup>52</sup>

<sup>49</sup> Barber, "The Trial of Carnival in *Part 2*," in *William Shakespeare's Henry IV, Part 2*, ed. Harold Bloom (New York: Chelsea House Publishers, 1987), 21–28. Barber writes that the "basic structures" of the play are "shaped by morality-play encounters between Virtues and Vices, encounters which from my vantage here can be seen as cognate to the festive and scapegoat pattern" (23).

<sup>50</sup> Hutson, "Not the King's Two Bodies: Reading the 'Body Politic' in Shakespeare's *Henry IV, Parts 1 and 2*," in *Rhetoric and Law in Early Modern Europe*, ed. Lorna Hutson and Victoria Kahn (New Haven, CT: Yale University Press, 2001), 167.

<sup>51</sup> Raffield, "The Ancient Constitution," 41.

<sup>52</sup> The Chief Justice speaks 149 lines in *Henry IV, Part 2*. To put that in perspective, Henry IV speaks 293 lines, Prince John 108, and Northumberland 108. These numbers are based on William Shakespeare, *Henry IV, Part 2*, ed. René Weis (Oxford: Clarendon, 1998). Subsequent quotations will come from this edition and will be cited parenthetically in the text.



What that means in staging is that the character of the Chief Justice appears throughout the play; furthermore, his performance once tracked exposes fascinating contradictions if we wish to pursue a political reading of the play, one that perceives the play as a celebration of the ability of the law to curtail the excesses of royal power, we should try to understand all the actions of the character, actions that turn out to be curiously inconsistent. Sometimes, he embodies the accessible and loving form of judgment that is rooted in popular religious literature, yet at other times he projects the aloof and “logical” form of judgment found in the legal professional literature. This mixture in the Chief Justice’s character reveals the active engagement of the play with both popular and professional legal literatures.

In the opening of the play, the Chief Justice patrols the streets like a constable. Falstaff’s greeting to the justice—“I am glad to see your lordship abroad” (1.2.92)—establishes the signature difference between this justice and his textual predecessors. Whereas this judge bumps into Falstaff at Pie Corner, Eastcheap, the judges in Shakespeare’s source-texts sit in judgment at Westminster.<sup>53</sup> In one of the sources, Sir Thomas Elyot’s *The Governour* (1531), the prince “set all in a fury / all chafed, and in a terrible maner / came up to the place of judgement” after hearing that the “Chief Justice” has refused to release the prince’s playmate. The judge bravely sits “styll without movynge / declarynge the majestie of the kynges place of judgement.”<sup>54</sup> Elyot’s use of antithesis allows the reader to compare the prince’s “fury” to the judge’s calm, the former’s motion to the latter’s “styll[ness].” Likewise, in *The Famous Victories of Henry the Fifth* (by an anonymous playwright, performed before 1588 and published in 1598), the judge is bench-bound and flanked by two legal officials, a jailer and a clerk. The judge’s opening line, “[j]ailer, bring the prisoner to the bar” establishes the actors’ static spatial relationship.<sup>55</sup>

In his encounters with the people, the Chief Justice performs the restorative possibility of the law. For example, when presented with the chance to investigate Falstaff’s part in the robbery at Gad’s Hill, the

<sup>53</sup> Pie Corner lies at the intersection of Giltspur St. and Cock Lane, West Smithfield (Weis, *Henry IV, Part 2*, n. to ll. 26–27).

<sup>54</sup> Elyot, *The Boke Named the Governour* (London, 1531), P[7]v–P[8]r. The passage, with minor orthographic changes, is transcribed by John Stow in *The Annales of England* (London, 1592).

<sup>55</sup> Barbara Hodgdon, ed., *The Famous Victories of Henry the Fifth*, in *The First Part of King Henry the Fourth: Texts and Contexts* (Boston: Bedford, 1997), 291–308. The line is spoken at 4.1.

Chief Justice decides to overlook Falstaff's transgression for, in his words, the knight has done a "day's service at Shrewsbury," which has "a little gilded over [his] night's exploit on Gad's Hill" (1.2.143–46). The justice's comment reflects a willingness to set aside the strict demands of the law in favor of an equitable solution. His decision exemplifies a form of equity in which the letter of the law is bent on account of the law's spirit.<sup>56</sup>

In his scenes with Mistress Quickly, the Chief Justice outdoes the justices of the peace, Shallow and Silent, in his attentiveness toward her affairs. He instantly materializes upon Fang and Mistress Quickly's cries: "A rescue, a rescue!" (Fang) and "Good people, bring a rescue or two" (Quickly, 2.1.54–55). Then, without much ado and without sheriffs or recorders or jurors, he arbitrates the dispute. He listens to Mistress Quickly's complaint that Falstaff "hath eaten [her] out of house and home" (2.1.72), that is, the sum of "thirty shillings" (2.1.100), and he learns that the knight has broken his promise of marriage to make Mistress Quickly his "lady . . . wife" (2.1.91)—a contract allegedly witnessed by "goodwife Keech the butcher's wife" (2.1.92). Before long, the Chief Justice decides the case in her favor. He admonishes Falstaff for "practis[ing] upon the easy-yielding spirit of this woman, and ma[king] her serve your uses both in purse and in person" (2.1.112–14) and orders Falstaff to remunerate her: "[p]ay her the debt you owe her, and unpay the villainy you have done with her. The one you may do with sterling money, and the other with current repentance" (2.1.116–19). His decision is partly based on his prior knowledge of Falstaff's "great infamy" (1.2.133) and on his understanding of Falstaff's "manner of wrenching the true cause the false way" (2.1.108–9). The Chief Justice's judicial style, as the scene reveals, is personal and intimate. His ears are attuned to the complaints of the suffering petitioner (although, it must be said, Mistress Quickly stretches the traditional image of the poor widow). He does not rely on attorneys and scribes to transcribe or interpret the evidence. In short, he acts as "defender of the fatherlesse, poore and needy" as prescribed in the religious and moral literature.<sup>57</sup> Embodying the archetypal, biblical image of the good judge, the Chief Justice addresses the needs of this lowly member of society and gives her a just and immediate solution. In an additional flourish, Shakespeare shows

<sup>56</sup> The representation of equity in early modern literature is (inevitably) a vast subject, but see Mark Fortier, *The Culture of Equity in Early Modern England* (Aldershot: Ashgate, 2005).

<sup>57</sup> Richard Carpenter, *The Conscionable Christian* (London, 1623), D1r.

the justice as a sensitive as well as sensible lawman when he tries to pair Mistress Quickly with Falstaff, an attempt to provide her with the symbolic reparation she so craves: to be his lady wife.

The reduction of distance between the justice and the people is paralleled in the play's topographical foreshortening. The urban landscape of the play, ostensibly the streets and taverns of fifteenth-century London, is reduced through a careful limitation of what is represented or alluded to in the scenes. In her article on dramatic representations of early modern London, Marissa Greenberg observes that certain plays in the period (such as domestic tragedies) exploited the public's anxiety concerning urban growth by "rendering London epistemologically secure" through the naming of London streets, boroughs, docks, markets, churches, and other topographical features.<sup>58</sup> *Henry IV, Part 2* works its magic in a different way. It achieves a sense of topographical familiarity not through an obsessive plotting of the imagined space but through the studied deletion of space. Falstaff's world is so appealing because it is dissimilar to the audiences' actual experience of London life. Falstaff's London belongs to an imagined, bygone world of "olde" England, which is distinguished by its sense of physical intimacy and closeness.

The accessibility of the Chief Justice is thrown into relief by the legalism of Justice Shallow, who casually squanders his right to arbitrate a local dispute.<sup>59</sup> To appreciate Shakespeare's design of the character of Justice Shallow, we should briefly examine the Elizabethan literature on the subject. Customarily, a justice of the peace was a local administrator of the sovereign's law. In Shakespeare's time, a justice of the peace was responsible for making inquiries into felony cases, hearing witness testimonies, overseeing poor relief, investigating recusancy, regulating alehouses and inns—he had many duties. In theory, only those who were "wise and learned in the law (*'sages et apris de la ley'*)" could be appointed justices of the peace.<sup>60</sup> The "keepers of the Peace" were, ideally,

<sup>58</sup> Greenberg, "Signs of the Crimes: Topography, Murder, and Early Modern Domestic Tragedy," *Genre* 40 (2007): 4.

<sup>59</sup> The total failure of Shallow as a justice of the peace—and how it could be seen to reflect the government's complaints against wayward JPs—is illuminated in Colin Burrow, "Reading Tudor Writing Politically: The Case of 2 *Henry IV*," *Yearbook of English Studies* 38 (2008): 234–50. See also John Kerrigan, "Henry IV and the Death of Old Double," *Essays in Criticism* 40 (1990): 24–53.

<sup>60</sup> Stat. 18 Edw. III (sess. ii), c. 2, qtd. in J. H. Baker, *An Introduction to English Legal History*, 4th ed. (Oxford: Oxford University Press, 2007), 25.

"[m]en of the beste reputation (*Meultz vailantz*)."<sup>61</sup> Yet in reality, the commission was more often than not given to men of local significance: men who enjoyed special social and economic status in the community. As Cynthia B. Herrup explains, "local standing, not legal expertise, qualified men as justices."<sup>62</sup> Thus, it was often the case that landowners possessing limited legal knowledge and superficial legal training became justices of the peace. The gap between expectation and reality was not lost on legal professionals and other observers. Lambarde was evidently so agitated by the ignorance of his fellow justices that he wrote and published an informative, accessible manual for justices. In *Eirenarcha* (1581), Lambarde regrets that the "more parte of the Justices of the Peace, at this day had nede of some helpe in writing for their better conduit in that office" and hopes that his "booke made common by Impression" might indeed "increase the knowledge of many of them and consequently doe a common good."<sup>63</sup>

Shallow, as his name suggests, epitomizes the figure of the foolish justice. Yet his real failing does not lie so much in his lack of legal knowledge as in his reliance on hearsay evidence and report. Whereas the Chief Justice adjudicates *Quickly's* complaint in person, Shallow permits his servant Davy to tell the story. From Davy, Shallow hears of a conflict between one "William Visor of Won'cot" and one "Clement Perks o'th'Hill" (the nature of the dispute is never made clear).<sup>64</sup> Davy pleads with Shallow to "countenance" or favor Visor (5.1.33) against Perks, even though Davy acknowledges the latter's respectable reputation. Initially, Shallow resists, remarking that "Visor is an arrant knave, on my knowledge" (5.1.35). But Davy asserts that an "honest man . . . is able to speak for himself, when a knave is not . . . I beseech you let him be countenanced" (5.1.38–39 and 43–44). Here, Davy juggles two meanings of the word "knave." Derived from the Old English word *cnafa*, "knave" signified to Shakespeare's audience both "boy" and "rogue."<sup>65</sup>

<sup>61</sup> Lambarde, *Eirenarcha* (London, 1581), C8v.

<sup>62</sup> Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge: Cambridge University Press, 1987), 42.

<sup>63</sup> Lambarde, *Eirenarcha*, Aijv. There was a market for this and other such manuals, for *Eirenarcha* was reprinted sixteen times between 1581 and 1626, and Michael Dalton's *The Country Justice* (London, 1618), a book modeled after Lambarde's, enjoyed similar popularity with readers.

<sup>64</sup> Burrow explains that "Wo'ncot and the 'Hill' are Gloucestershire places, corresponding to Woodmancote and Stinchcombe Hill" ("Reading Tudor Writing Politically," 243).

<sup>65</sup> "Knave, n., 1 and 3," *Oxford English Dictionary Online* (Oxford: Oxford University Press), <http://www.oed.com>.

In a linguistic sleight-of-hand, Davy appears to transpose a more innocent meaning of the word ("boy") for a more insidious one ("rogue"), as when he argues that a "knave" ("boy") is unable to deliver his own defense.

The silver-tongued Davy also hoodwinks his master by confusing the universal category with the particular. Even if a knave is unable to "speak for himself," it does not follow logically that all knaves lack eloquence. But Shallow, as his name implies, is too dull to detect the logical fallacy. Finally, Davy wraps his argument in the sweet words of friendship. He tells Shallow that Visor is "mine honest friend" and simultaneously reminds his master, "I have served your worship truly . . . this eight years" (5.1.40). The evocation of friendship and loyalty proves irresistible to Shallow. Even though "Visor" signifies the "front part of a helmet" and a "mask to conceal the face," meanings which instantly connect the character to the play's recurring scenes of nighttime violence and military aggression, and "Clement" suggests Christian mercy, mildness, kindness, humility, and perhaps wisdom, Shallow abides by Davy's request to favor the former.<sup>66</sup> Witnessing the episode from his place at the dinner table, Falstaff concludes his host is utterly ruled by his servants: "by conversing with them, [he] is turn'd into a justice-like servingman" (5.1.59–60). This breakdown in justice, stemming from both the JP's misplaced notion of friendship and his reliance on hearsay, is precisely what writers decried in sermons and moral essays.

Justice Shallow represents a flawed magistrate. Yet, his foil, the Chief Justice, is also a compromised legal administrator. As the play progresses, it becomes evident that the Chief Justice's approach to judgment, which seems equitable, intimate, personal, and perhaps emotionally satisfying, is unsustainable. Instead of establishing order once and for all, the Chief Justice allows Falstaff to take advantage of Mistress Quickly's gullible nature a second time. We recall how he had rationalized Falstaff's transgression at Gad's Hill: "[b]ut since all is well, keep it so. Wake not the sleeping wolf" (1.2.149). The line is based on the proverb "let sleeping dogs lie."<sup>67</sup> But the replacement of "dogs" with

<sup>66</sup> "Visor, vizor, n.," *OED Online*.

<sup>67</sup> Compare this line to "[i]t is nought good a slepyng hound to wake" (Geoffrey Chaucer, *Troilus and Criseyde*, in *The Riverside Chaucer*, ed. Larry D. Benson, 3rd ed. [Boston: Houghton, 1987], 3.764); "it is evill waking of a sleeping dogge" (John Heywood, *The Proverbs of John Heywood. Being the "Proverbs" of That Author Printed 1546*, ed. Julian Sharman [London, 1874], 51); and "[i]t is evill waking of a Dog that doth sleepe" (Nathaniel Woodes, *The Conflict of Conscience* [1581], qtd. in Bartlett Jere Whiting, *Proverbs in the*

"wolf" gives pause. Because "wolf" evokes danger and lawlessness, the line subtly conveys the possibility that his decision to delay judgment could result in unforeseen and troubling consequences. For what happens when the wolf awakes? Act two reveals the consequences of the Chief Justice's decision to maintain the *status quo*. At the precise moment when he appears to have successfully pressed Falstaff into "satisfy[ing] the poor woman" (2.1.129), a messenger, Gower, enters bearing a message for the judge. As he becomes immersed in reading the latest "news" (the allocation of the king's troops), the Chief Justice misses Falstaff's new trick: conning Mistress Quickly out of £10, which is a greater sum than the original one cited in her suit. At the end of the scene, Mistress Quickly, who has, in her words, "borne, and borne, and borne, and have been fobbed off, from this day to that day," is left to bear her burdens for another day (2.1.33–34). In short, while full of good intentions, the Chief Justice fails to produce tangible results. His legal interventions fail to advance the cause of justice in a lasting way.

Thus, a later scene overwrites the logic of an earlier one. Taken together, they form a palimpsest. Initially, the familiar contact between the Chief Justice and the people fulfills the popular notion that justice depends on the absence of legal intermediaries. Unlike Justice Shallow, who allows his servant Davy to mediate the dispute between William Visor and Clement Perks, the Chief Justice does not rely on hearsay but investigates cases in person. During his walk through Eastcheap, he nips street violence in the bud and, demonstrating his humanity, he soothes Mistress Quickly by acknowledging her right to become Falstaff's. In these early scenes, the Chief Justice is the very image of a loving, public-oriented magistrate as posited in the popular literature on judges and magistracy. But even as the play invites audiences to commend the Chief Justice's employment of summary judgment, it leaves the audience in doubt of the practicality of that model. The Chief Justice lacks the means to enforce his judgment. He is a tourist in his city.

By leaving the bench and making his way through the city, the Chief Justice comes in contact with the commoners, but he also relinquishes the ability to correct their transgressions and to enforce the law. Thus, he bears more than a passing resemblance to the "old lord of the Council" described in *Henry IV, Part 1*, who "rated" Falstaff "in the street" about

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*Earlier English Drama with Illustrations from Contemporary French Plays* [Cambridge, MA: Harvard University Press, 1938], 154).

the latter's pernicious influence over Hal (1.2.83–84).<sup>68</sup> (This character does not actually appear in the play.) When Falstaff recounts the meeting to Hal, saying how he “marked him not . . . and yet he talked wisely, and in the streets, too” (1.2.86–87), Hal compares the “old lord” to Wisdom: “[t]hou didst well, for wisdom cries out in the streets and no man regards it” (l. 88–89). If the “old lord” symbolizes Wisdom and if the Chief Justice is based on the “old lord,” it stands to reason that the audience is encouraged to associate the Chief Justice with Wisdom. But this comparison is potentially problematic, since Wisdom is ignored by the people, the “simple ones” and “scorners” of the marketplace:

Wisedome crieth without, shee uttereth her voice in the streets: Shee cryeth in the chiefe place of concourse, in the openings of the gates: in the city she uttereth her words, *saying*, How long, ye simple ones, will ye love simplicitie? and the scorners delight in their scorning, and fooles hate knowledge.<sup>69</sup>

Slowly, then, the play exposes the flaws in the popular, “loving” fantasy of magistracy. However, its reduction of one fantasy does not amount to unambiguous support for another professional or institutional ideal of the judge. Just as the play reproduces, yet at the same time undermines, the popular discourse, so it does the same with the professional one. The Chief Justice's final scenes demonstrate the paradox of legal authority. In order to embody the splendor of the law, the Chief Justice has little choice but to sever his relationship with the people, resulting in the permanent rupture of the merry world.

In act 5, scene 2, the Chief Justice is summoned to appear before the new king at Westminster. The Chief Justice worries that the death of the old king leaves him “open to all injuries” (5.2.8). The courtiers concur with his grim assessment. Warwick informs him, “[i]ndeed I think the young King loves you not” (5.2.9), and Prince John declares, “[y]ou stand in coldest expectation” (5.2.31). Seemingly abandoned by his former allies, the Chief Justice, for the first time in the play, emotes fear: “O God, I fear all will be overturned” (5.2.19). When he meets the new king, he launches into an eloquent defense of his actions and of the necessity of his office. The speech effectively disassociates the man from the office:

I then did use the person of your father.  
The image of his power lay then in me;

<sup>68</sup> Shakespeare, *The First Part of Henry the Fourth*, in *The Riverside Shakespeare*, ed. G. Blakemore Evans (Boston: Houghton, 1974), 847–85.

<sup>69</sup> Prov. 1:20–22, *The Holy Bible* (London, 1612).

And in th'administration of his law,  
 Whiles I was busy for the commonwealth,  
 Your highness pleasèd to forget my place,  
 The majesty and power of law and justice,  
 The image of the King whom I presented,  
 And struck me in my very seat of judgement.  
 (5.2.72–79)

In the speech, the Chief Justice tries to extinguish any sense of his own agency: he claims that he did not punish the prince for physically assaulting him, the private individual, but for attacking the king, the commonwealth, and the “majesty and power of law and justice” (5.2.77). Not unlike a conjurer who arranges his charms, tokens, and talismans before casting a spell, the Chief Justice enumerates the objects that bespeak his authority, such as the “seat of judgement” (5.2.79), the “awe-full bench” (5.2.85), and “the sword / That guards the peace and safety of your person” (5.2.86–87). Through such a layering of legal language, he recreates the symbolic parts of the law. At the same time, the tactic is evasive, for he hides behind the scrim of judicial symbols. In this speech, then, he engages in a linguistic act of self-fashioning through self-effacement. In order to establish his own authority, the Chief Justice develops a parallel between legal and royal authority. Yet this is potentially problematic, for it jeopardizes the independence of the judiciary and endangers the very ideal of English “mixed” government.

The appointment (or reappointment) of the Chief Justice promises the beginning of a golden age of legal administration in England. Yet as the final scenes of the play demonstrate, the administration of justice is limited by the Chief Justice’s newfound closeness to the king. The result of this pact contributes to the breakup of community. After his reconciliation with the king, the Chief Justice assumes a place within the king’s council. Where the king goes, so goes he. Consequently, he does not witness the beadles’ arrest of Mistress Quickly and Doll Tearsheet. He does not see them dragging out the women for a “whipping-cheer” (5.4.5)—punishment for their alleged participation in a murder (“the man is dead that you and Pistol beat amongst you” [5.4.16–17]). The identity of the dead man, the means by which he came to be in Mistress Quickly’s house, her motives for “beat[ing]” the man to death—these are all left as open-ended questions. Mistress Quickly demands a fair hearing—“bring me to a justice” (5.4.25)—but her request is ignored by the beadles. The Chief Justice is conspicuously absent, and so too is the form of accessible justice he represented. What is Mistress Quickly’s



fate? Shakespeare trusts his audience to supply the missing scene. As the Middlesex County Records reveal, women (sometimes identified as prostitutes and brothel keepers) were whipped for moral transgressions. Joan Lea, for example, was informed that as she had “confessed that she had a bastard child begotten on her by Thomas Bates,” she would be “openly whipped at a cart’s tail in St. John Street upon Saturday next until her body be all bloody.”<sup>70</sup> This may be the punishment awaiting Mistress Quickly and Doll Tearsheet.

The end of the play sees the establishment of a new order—yet this order comes at an emotional cost. Acting as the king’s deputy, the Chief Justice plays a role in Hal’s public humiliation of Falstaff. Shakespeare has prepared the audience for this scene since Hal’s first soliloquy in *Henry IV, Part 1*: “I know you all, and will a while uphold / The unyok’d humor of your idleness” (1.2.195–216). But no amount of foreshadowing can soften the impact of Hal’s final and irreversible rejection of Falstaff. Disappointed, chastened, Falstaff faces up to reality by acknowledging to Shallow his debt of a thousand pounds: a stupendous sum as befitting a larger-than-life man. The impact of the scene on audiences hardly needs to be rehearsed. To quote A. C. Bradley, “we feel . . . during the King’s speech, a good deal of pain and some resentment.”<sup>71</sup>

The rejection of Falstaff is one of the most dramatic and emotionally wrenching moments in Shakespearean drama, and the Chief Justice plays a prominent role in this tragic scene. Hal charges the Chief Justice to “see performed the tenor of my word” (5.5.70).<sup>72</sup> So he does, by ordering his officers to “[g]o carry Sir John Falstaff to the Fleet / Take all his company along with him” (5.5.89–90). Falstaff beseeches the Chief Jus-

<sup>70</sup> “Sessions, 1613: 4 and 6 August,” in *County of Middlesex. Calendar to the Sessions Records: New Series*, Vol. 1: 1612–14, ed. William Le Hardy, British History Online, <http://www.british-history.ac.uk/report.aspx?compid=82310>.

<sup>71</sup> Bradley, *Oxford Lectures on Poetry* (London: Macmillan, 1934), 251.

<sup>72</sup> In the Oxford edition, Weis modernizes “tenure” to “tenor.” Although this emendation makes grammatical sense, it flattens the semantic richness contained in the original spelling. Both the 1600 quarto editions (see the Qa and Qb copies available on EEBO) and the 1623 first folio (see *Digital facsimile of the Bodleian First Folio of Shakespeare’s plays*, Arch. G c.7, <http://firstfolio.bodleian.ox.ac.uk/book.html>) spell the word “tenure.” According to the *OED*, the primary meaning of “tenor” is the “course of meaning which holds on or continues through something written or spoken; the general sense or meaning of a document, speech, etc.; substance, purport, import, effect, drift” (“tenor, n.1 and adj.,” *OED Online*). Yet there is also a legal connotation. “Tenure,” in English common law, signifies the “name given to the relationship whereby a tenant holds land of a lord” (Baker, *Introduction*, 223). Henry’s use of the word recasts his relationship with the judge as that between a lord and his tenant. This language thus works against the civic republicanism inherent in the common law discourse, which posits the independence of the judiciary.

tice for an interview. But the Chief Justice cuts off Falstaff's pleads ("My lord, my lord—") and defers the conversation with these brief lines: "I cannot now speak. I will hear you soon. Take them away" (5.5.92–93). The simple sentences seem transparent, yet they jangle with extra significance. "I cannot now speak" expresses the Chief Justice's desire to follow the king. But the line also suggests his lack of agency. As the king's counselor and the living "image" of the sovereign, the Chief Justice must form his words and actions according to the king's will. "I will hear you soon" constitutes the Chief Justice's promise to listen to Falstaff's rejoinder to the edict of banishment. Yet the line also signals the Chief Justice's participation in the game of deferral and mediation that so often leads to the exploitation of the people, as noted by contemporary commentators. Finally, his line, "take them away," foreshadows the death of Falstaff and of the joyful world for which he stood. Indeed, the sentence presages the quiet erasure of the Chief Justice himself, for he, like Falstaff, plays no part in *Henry V*. His absence hollows out Hal's promise to "stoop and humble my intents / To your well-practised wise directions" (5.2.119–20). In *Henry V*, it is the king and his bishops who resolve thorny legal questions such as the historical origins of the "Salique law" (1.2.54) and the judgment of the traitors Scroop, Grey, and Cambridge (1.2.54).<sup>73</sup> The removal of the Chief Justice deprives the royal court of his "wise directions" and paves the way for the king to rule with near-absolute freedom.

## CONCLUSION

*Henry IV, Part 2* refracts law into vignettes, each containing a different vision of justice. The Chief Justice possesses many of the moral qualities of a good judge as defined by preachers and moral authors: "deepe understanding," "boldnesse and courage," "honesty of conscience," "uprightnesse of justice," and "equitie of sentence."<sup>74</sup> But these moral qualities do not enable him to implement the law. The Chief Justice mingles with the people, yet that personal contact does not lead to the people's lasting happiness. True, the people gain a measure of recognition in the eyes of the law. However, this in itself does not appear to accomplish the basic "desire" of justice as defined in the classic maxim:

<sup>73</sup> Shakespeare, *The Life of Henry V*, in *The Riverside Shakespeare*, ed. G. Blakemore Evans (Boston: Houghton, 1974), 930–75.

<sup>74</sup> This list of moral qualities comes from Garey, *Ientaculum Iudicum*, B3r–v.

justice means to “render to each one that which is his due.”<sup>75</sup> This sentence, from Justinian’s *Institutes*, alludes to Aristotle’s discussion of justice as equity, the practice of giving to each person what is due to him or her. For Aristotle, the end of justice is the “attainment of . . . happiness” or “the good life.”<sup>76</sup> With that value in mind, we might ask, do the actions of the Chief Justice produce the conditions for justice and the “good life”? It seems not. His judgments are not enforced. He leaves the inhabitants of Eastcheap in various states of irresolution and even suffering at the end of the play.

Yet the failure of the familiar model of magistracy does not function as an endorsement of the professional discourse that views magistracy as a performance of majesty and imagines legal distance to be a necessary part of the law. When the Chief Justice acts as a royal justice, he becomes an instrument for a kind of poetic injustice, and for that breach he appears to be condemned to dramatic oblivion. Thus, the play problematizes both institutional and popular visions of the character of the judge. What we are left with is a character constructed out of the clashing desires and anxieties of multiple communities: common lawyers, preachers, and satirists—perhaps the audience themselves. Shakespeare’s legal character both arises from and magnifies conflicting cultural ideologies. A judge should strive to be accessible but not common. A judge should be with the people but maintain his distance, for he risks subjecting himself to the people’s rule if he is seen to be too accessible. A judge should be loving—but also severe. A judge should listen to his “feeling heart”—but control his feelings with reason. What a bewildering set of contradictions.

Like its source-texts, *Henry IV, Part 2* presents audiences with “a panorama of society,” to quote Jonathan Bate.<sup>77</sup> It depicts the interwoven histories of many worlds, elite and common, urban and rural, and develops some of the most urgent social, political, and legal questions of the day. The play functions as a heuristic, an instrument of investigation, in the way it exposes the internal contradictions in commonly held logics about the administration of law. To be effective, should a judge strive to be removed from the people? Should they privilege legal reason over

<sup>75</sup> Justinian and Gaius, *The Institutes of Gaius and Justinian, The Twelve Tables, and the CXVIIIth and CXXVIIth Novels*, trans. T. Lambert Mears (London, 1882), Just. 1.1.

<sup>76</sup> Aristotle, *The Nicomachean Ethics*, trans. H. Rackham (Cambridge, MA: Harvard University Press, 1926), 1.4.2–3.

<sup>77</sup> Bate, *Soul of the Age: A Biography of the Mind of William Shakespeare* (New York: Random, 2009), 296.

human compassion—what preachers call “love”? The play provides no easy answers. In withholding a resolution to a persistent problem and in resisting the affective logic of preachers and other moral writers, the play breaks free from its popular roots. Yet even as the play seems to criticize popular sentiments, it draws audiences toward an unspoken, perhaps unspeakable, conclusion: the ascension of law comes at the expense of true justice.<sup>78</sup>

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